

The \$15 tax rate applies when the intended beneficiary of a will disclaims the will and, as a result, a motor vehicle is transferred to the testator's niece. See 625 ILCS 5/1001. (This is a GIL.)

September 9, 2005

Dear Xxxxx:

This letter is in response to your letter dated May 19, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We represent ABC, independent executor of the Estate of XYZ, deceased (the 'Decedent'). The Decedent died, leaving a Will, on August 11, 2003. The Decedent's estate is being probated in the Circuit Court of COUNTY, Illinois, County Department, Probate Division as case No. #. The Decedent has only two (2) heirs: his brother, who has been appointed independent executor, and his niece.

Pursuant to the terms of the Decedent's Will, the Decedent left his entire estate to his elderly brother. ABC, who is in his eighties and has adequate assets of his own, disclaimed his brother's entire estate under Section 5/2-7 of the Probate Act (755 ILCS 5/2-7).

The legal effect of a disclaimer is set forth at Section 5/2-7(d) of the Probate Act:

(d) Effect of Disclaimer. Unless expressly provided otherwise in an instrument transferring the property or creating the interest disclaimed, the property, part or interest disclaimed shall descend or be distributed (1) if a present interest (a) in the case of a transfer by reason of the death of any person as if the disclaimant had predeceased the decedent...

Thus, the result of ABC's disclaimer of the Decedent's estate is that the entire estate passes to the Decedent's sole remaining heir, [NIECE].

One of the assets left in the Decedent's estate is a 1999 Lexus automobile (the 'Lexus'). I recently prepared and submitted an Application for Vehicle Title and Registration, seeking to transfer title to the Lexus to the Decedent's sole surviving heir, [NIECE]. As required by 65 ILCS 5/3-1001 Vehicle Use Tax', I also prepared and submitted Form RUT-50, Vehicle Use Tax Transaction Return. I marked the box at line 7f of the return declaring that [NIECE] the transferee is '...a beneficiary who is not the surviving spouse, and the vehicle is an estate gift'.

When I presented the completed Form RUT-50 to the Illinois Department of Revenue representative at the Thompson Center in Chicago, the application was rejected. I was told that (1) the Will left the vehicle to ABC, not [NIECE]; and (2) a niece does not qualify for an exemption. Given the legal effect of a disclaimer as set forth at Section 5/2-7d) of the Probate Act, the person who takes the estate in lieu of the primary beneficiary is nonetheless a beneficiary who receives an estate gift in the administration of the estate. Claiming the exemption at line 17f results in a tax of \$15.00; otherwise the tax is \$750.00. In order to process the Application for Vehicle Title and Registration, we have paid the tax of \$750.00, but intend to apply for a refund. Because the issue of a disclaimer is a novel one, [the] Manager of the Chicago Cashier and Deposit Division of the Illinois Department of Revenue suggested that we obtain a letter ruling before applying for the refund. We have been referred to your office for the letter ruling.

We are, therefore, seeking a letter ruling from your office to the effect that an heir who receives the assets of a decedent's estate by reason of a disclaimer is a beneficiary in the administration of an estate; and where one of the assets is a motor vehicle, the heir qualifies for the Vehicle Use Tax exemption set forth at 625 ILCS 5/3-1001 that establishes a tax rate of \$15.00 when the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is not a surviving spouse.

The Vehicle Use Tax provides that the tax rate shall be \$15 for each motor vehicle acquired when the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is not a surviving spouse. 625 ILCS 5/3-1001. As we understand it, under the testator's will, the testator's brother was the originally intended beneficiary of the motor vehicle at issue; however, when the testator's brother disclaimed the testator's entire estate, the testator's niece became the beneficiary of the motor vehicle. See 755 ILCS 5/2-7(d) regarding disclaimer of will. Since the transfer of the vehicle to the testator's niece was the result of a gift to a beneficiary in the administration of an estate, and the niece is not a surviving spouse, the \$15 rate applies.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk